

#8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang

Serial No.: 09/752,744

Group Art Unit: 2661

Filed: 12/29/2000

Examiner:

For: **System and Method for Multicast Stream Failover**

RENEWED PETITION UNDER 37 C.F.R. 1.137(b)

Commissioner for Patents
Washington, D.C. 20231RECEIVED
NOV 18 2002

Dear Sir:

OFFICE OF PETITIONS

In reply to the Decision Dismissing Petition dated of September 09, 2002 (hereinafter "the Decision"), Applicant respectfully requests reconsideration of the Decision. In the Decision it is reasoned that dismissal of Applicant's Petition is appropriate since Applicant has not provided a response in the form of submission of missing parts after receipt of the "Notice to File Missing Parts from the U.S. Patent and Trademark Office (USPTO)". The decision on the prior petition also cited the fact that the declaration of the one remaining cooperative inventor was not drafted in the form of a joint declaration of all of the inventors.

Applicant submits herewith a corrected JOINT declaration and power of attorney to satisfy the required missing parts filing. Also enclosed herewith is a copy of the prior Petition for Revival filed on June 10, 2002 including the statement of the Attorney responsible for the matter detaining the steps taken to obtain the require missing parts.

The decision further noted that the prior petition was not supported by a petition under 37 C.F.R. 1.47. A petition under that section and the appropriate fee are also enclosed.

In view of this supplemental submission, grant of the Petition is respectfully requested.

Respectfully submitted.

12/10/2002 AKELLEY 00000011 181579 09752744
01 FC:1051 130.00 CHJon L. Roberts
Registration No. 31,293
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Suite 1000
Reston, VA 20191
(703) 391-290011/18/2002 AHONDAF1 00000168 09752744
01 FC:1460 130.00 OP

November 14, 2002

Atty. Docket No. 2585-001



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang

Serial No.: 09/752,744

Group Art Unit: 2661

Filed: 12/29/2000

Examiner:

For: System and Method for Multicast Stream Failover

PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents
Washington, D.C. 20231

RECEIVED

NOV 18 2002

Dear Sir:

OFFICE OF PETITIONS

The above-identified application was filed in the U.S. Patent and Trademark Office on December 29, 2000 with an unexecuted Declaration under 37 C.F.R. § 1.63.

As will be explained in more detail below, inventor Kenneth Gould subsequently executed a Declaration. However, Inventors Joo H. Chung, Michael Sun, and Frank Huang have not joined Kenneth Gould in the above referenced application. The signing inventor respectfully petitions to file the above referenced application on his behalf and on behalf of the non-signing inventors.

PERTINENT FACTS

As noted above, the above referenced patent application was filed with missing parts on December 29, 2000. In the summer of 2000, prior to the filing of the application), two of the inventors, Huang and Chung terminated their employment with Road Runner, Inc. (Assignee of the above referenced patent application), and a dispute between Road Runner and these inventors ensued. As part of the effort to resolve the dispute, counsel for Road Runner and counsel for the

November 14, 2002

Atty. Docket No.: 2585-001

departed inventors agreed to enter into mediation. One aspect of the settlement was that the departed inventors would continue to fulfill their individual responsibilities under employment agreements with Road Runner with respect to intellectual property matters. While assurances on numerous occasions were given that these inventors would sign the required documents, no signed documents were ever provided.

Attempts were also made to obtain the signatures of the two remaining employees, Gould and Sun. Following the receipt of a Notice of Missing Parts, the attempts were renewed through representatives of Road Runner, again with no success. Subsequently, inventor Gould executed a declaration and assignment. However, inventor Sun terminated his employment with Road Runner without executing those documents.

A declaration by counsel in support of these facts is attached hereto.

Pursuant to employee agreements, all four inventors had obligations to send executed documents related to this application and to assign them rights to assignee Road Runner, Inc. In fact one of the three inventors who did not execute a declaration (inventor Sun) did execute an assignment.

The last known addresses for the inventors are:

Joo Chung
5104 Woodfield Drive
Centreville, VA 20120

Michael Sun
2 Case Street, Apt 212
Syracuse, NY 13244

Kenneth Gould
11273 B Waples Mill Road
Oakton, VA 22124

Frank Huang
1218 Wild Hawthorn Way
Reston, VA 20194

In view of the above statement of facts Applicant/Assignee Road Runner, Inc. hereby submits (1) a Declaration of the undersigned attorney setting forth the facts and circumstances surrounding the inability to obtain the signatures of all the inventors, (2) Declaration of Mr.

November 14, 2002

Atty. Docket No.: 2585-001

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OFFICE OF PETITIONS

Kenneth Gould, and (3) copies of the recorded assignments of inventors Michael Sun and
Kenneth Gould (4) the fee specified in 37 C.F.R. § 2.6.

In view of this submission, grant of this Petition is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jon L. Roberts", written over the typed name.

Jon L. Roberts
Registration No. 31,293
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Suite 1000
Reston, VA 20191
(703) 391-2900



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang

Serial No.: 09/752,744

Group Art Unit: 2661

Filed: 12/29/2000

Examiner:

For: **System and Method for Multicast Stream Failover**

DECLARATION UNDER 37 C.F.R. § 1.131

Commissioner for Patents
Washington, D.C. 20231

RECEIVED
NOV 18 2002

Dear Sir:

OFFICE OF PETITIONS

I, Jon L. Roberts, a registered patent attorney (No. 31,293) declare as follows:

I represented and continue to represent Road Runner, Inc., the Assignee of the above referenced application, as patent counsel, and I am familiar with the prosecution of the above referenced application. During the drafting of the application, copies of the application were provided to the Assignee and the inventors. Further, numerous attempts were made to secure the signature of all of the inventors on a declaration and on an assignment.

With respect to non-signing inventors Huang and Chung, these inventors left the employment of the Assignee prior to the filing of the application (December 29, 2000) and a dispute between Road Runner and these inventors ensued. As part of the effort to resolve the dispute, counsel for Road Runner and counsel for the departed inventors agreed to enter into mediation. One aspect of the settlement was that the departed inventors would continue to fulfill their individual responsibilities under employment

November 14, 2002

Atty. Docket No.: 2585-001

agreements with Road Runner with respect to intellectual property matters. While assurances on numerous occasions were given that these inventors would sign the required documents, no signed documents were ever provided.

In support of this statement, I have attached an email “thread” (redacted where appropriate) that shows the efforts made by the undersigned (referred to as “Patent Counsel”) to obtain the cooperation of the unsigned inventors. The email chronology is as follows:

- August 23, 2000, an exchange of emails between Road Runner’s outside counsel (Settlement Counsel) and Patent Counsel discussing an exchange of patents for which cooperation was sought.
- October 11, 2000, an exchange in which it is noted that “Shapiro wanted to send them copies of the patent applications...” Shapiro was counsel for Inventors Chung and Huang. This statement demonstrates that the applications had been provided to these two non-signing inventors through counsel.
- March 22, 2001, an exchange of emails between Patent Counsel and Settlement Counsel in which the inability to obtain signatures from Inventors Chung and Huang is expressly noted. Additionally, Settlement Counsel’s response expressly states that counsel for Huang and Chung has not responded to other requests for cooperation from his clients.

The email thread does not, however, reflect all the attempts made to obtain cooperation of the non-signing inventors. Numerous calls not reflected in the documentation were made to counsel for Inventors Chung and Huang requesting cooperation in signing documents.

Attempts were also made to obtain the signatures of the two remaining employees, Gould and Sun. Following the receipt of a Notice of Missing Parts, the attempts were renewed through representatives of Road Runner, again with no success. (See attached letter to Casey Lloyd of Road Runner dated April 27, 2001) Subsequently, inventor Gould executed a declaration and assignment. However, inventor Sun terminated his employment with Road Runner without executing those documents.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 11/14/02

By: 

Jon L. Roberts
Registration No. 31,293
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Suite 1000
Reston, VA 20191
(703) 391-2900

-----Original Message-----

From: Jon Roberts [<mailto:jroberts@VIENNAPAT.COM>]

Sent: Wednesday, August 23, 2000 6:58 PM

To: 'Connally, N. Thomas, III'

Subject: RE: RR Patent Apps List

Hi TOm:

The list is good. I was trying to find the inventors of the Dial Roaming but do not have that in the record at this moment.

Otherwise go ahead with the list.

Jon

-----Original Message-----

From: Connally, N. Thomas, III [<mailto:NTConnally@HHLAW.com>]

Sent: Wednesday, August 23, 2000 6:43 PM

To: 'jroberts@viennapat.com'

Subject: RR Patent Apps List

<<0149119.DOC>>

PRIVILEGED & CONFIDENTIAL

Jon,

If this list looks OK, our plan is to provide it to the other side subject to the terms of the protective order in place. Thanks, TC

"WorldSecure <hhlaw.com>" made the following annotations on 08/23/00 18:42:47

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[INFO] -- Access Manager:

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11/13/2002

CONFIDENTIAL

LIST OF ROAD RUNNER
FILED AND DRAFT PATENT APPLICATIONS

Applications filed:

2. **System and Method for Multi-Cast Stream Failover**
(inventors Joo C. Chung, Michael Sun, Kenneth Gould, Frank Huang)

Jon Roberts

From: Connally, N. Thomas, III [NTConnally@HHLAW.com]
Sent: Wednesday, October 11, 2000 7:59 PM
To: James R. Brueneman (E-mail); Brown, Stanley J.; Jon Roberts
Subject: Interviews with Monitors

PRIVILEGED & CONFIDENTIAL

We are planning to meet with the potential monitors Tuesday morning, October 17, starting at 8:30 AM at Latham's offices downtown. The tentative schedule is Brian Madden at 8:30, Joe Potenza at 9:30 and Howard Bernstein at 10:30. I told Ed Shapiro that Stan and/or I would be there in person and that Jim and Jon would participate in person or by phone as their schedules permit. Rowleson will be there, either in person or on the phone.

We agreed that copies of the settlement agreement could be sent by the parties to each candidate, on the condition that the candidates keep the agreement confidential and return their copy if not selected. Shapiro also wanted to send them copies of the patent applications, which we told him was premature and probably not necessary for the selection process.

Ed had originally suggested 1 and 1/2 hours per candidate, which I said was way too long. We arrived at an hour each, but I don't know why it would take even that long to interview these guys, but would appreciate your thoughts. I am sure if the actual interviews don't take an hour, we can probably put the time between interviews to good use discussing the candidates, potential experts to assist the monitor, and the like.

Let me know if anyone has any conflicts, questions, comments, etc.
Many thanks, TC

"WorldSecure <hhlaw.com>" made the following
annotations on 10/11/00 19:58:39

[INFO] -- Access Manager:

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If you have received this electronic transmission in error,
please notify us by telephone (202-637-5600) or by
electronic mail (PostMaster@HHLAW.COM) immediately.

11/13/2002

Jon Roberts

From: Connally, N. Thomas, III [NTConnally@HHLAW.com]
Sent: Thursday, March 22, 2001 2:36 PM
To: James R. Brueneman (E-mail)
Cc: Jon Roberts
Subject: RE: Roadrunner

Jim, Let us know how you want to handle this. I see no problem with Jon contacting Ed Shaprio directly, but want to make sure that is OK with you. Thanks, TC

-----Original Message-----

From: Jon Roberts [mailto:jroberts@VIENNAPAT.COM]
Sent: Thursday, March 22, 2001 2:32 PM
To: N. Thomas Connally III (E-mail)
Subject: Roadrunner
Importance: High

Hi Tom:

Haven't heard from you on the signing of documents by the former RR employees. Can I contact their attorney? Time is getting to be a serious obstacle to the registration of the IP rights. If they are not going to sign I will need to know that so that we can take appropriate action.

Please advise me as soon as possible concerning contacts with the inventors.

Thank you
Jon

Jon L. Roberts, PH.D., J.D.
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Reston, VA 20191
703-391-2900
Fax: 703-391-2901
Cell: 703-851-1112

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Jon Roberts

From: Connally, N. Thomas, III [NTConnally@HHLAW.com]
Sent: Thursday, March 22, 2001 2:37 PM
To: Jon Roberts
Subject: RE: Roadrunner

John, I sent your earlier e-mail to Jim as well, and just have not heard back from him. Will keep the pressure on. If we don't hear soon, let's put a call into him. Thanks, TC

-----Original Message-----

From: Jon Roberts [<mailto:jroberts@VIENNAPAT.COM>]
Sent: Thursday, March 22, 2001 2:32 PM
To: N. Thomas Connally III (E-mail)
Subject: Roadrunner
Importance: High

Hi Tom:

Haven't heard from you on the signing of documents by the former RR employees. Can I contact their attorney? Time is getting to be a serious obstacle to the registration of the IP rights. If they are not going to sign I will need to know that so that we can take appropriate action.

Please advise me as soon as possible concerning contacts with the inventors.

Thank you
Jon

Jon L. Roberts, PH.D., J.D.
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Reston, VA 20191
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Fax: 703-391-2901
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April 27, 2001

Casey Lloyd, Paralegal
Road Runner
13241 Woodland Park Road
Herndon, VA 20171

Re: Patent Application Serial No. 09/752,744 for
SYSTEM AND METHOD FOR MULTICAST STREAM FAILOVER

Dear Casey:

Enclosed please find the Declaration and Power of Attorney and Assignments for Messrs. Sun and Gould to sign.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jon L. Roberts, J.D., Ph.D.

JLR:bh
Enclosures



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

ROBERTS, ABOKHAIR & MARDULA, LLC
SUITE 1000
11800 SUNRISE VALLEY DRIVE
RESTON, VA 20191-5302



Paper No. 5

COPY MAILED

SEP 09 2002

In re Application of
Kenneth Gould, Joo Chung,
Michael Sun and Frank Huang
Application No. 09/752,744
Filed: December 29, 2000
Attorney Docket No. 2585-007
Title: System and Method for
Multicast Stream Failure

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition filed June 10, 2002, under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed February 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been timely received and no extensions of time obtained, the above-identified application became abandoned on April 16, 2001. The filing of this petition precedes the mailing of a courtesy Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the reply required to the outstanding Office action or notice, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

The reply required to revive an application is the reply sufficient to have avoided abandonment. The outstanding Notice mailed February 15, 2001 required applicants to timely file an executed oath or declaration; the surcharge for late filing under § 1.16(e); and substitute drawings in compliance with § 1.84 to avoid abandonment. The reply filed on petition does not include an acceptable declaration, the late surcharge or new drawings.

A complete application filed under § 1.53(b) requires an oath or declaration in compliance with § 1.63 and § 1.68. Consistent with statutory requirements, § 1.64(a) further provides that the § 1.63 oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43, 1.47 and 1.67.

Petitioner has submitted a declaration executed by only inventor Kenneth Gould. Although the petition suggests that the basis for submission of such a declaration is that the other inventors are unavailable, no petition (and fee) under § 1.47 accompanied the reply. See also MPEP 409.03. It is further noted that the declaration although identifying all four inventors is not drafted as a declaration of joint inventors executed by inventor Gould on behalf of himself and on behalf of the non-signing inventors (i.e., references should be to "we" not "I").

In order for the application to be revived, petitioner must submit the required reply within the meaning of 37 CFR § 1.137(b)(1) (executed oath or declaration in compliance with § 1.63; the surcharge for late filing under § 1.16(e); and substitute drawings in compliance with § 1.84). Petitioner is advised that the amount of the required reply may increase if the surcharge increases prior to receipt of applicant's payment in the Office. See 37 CFR 1.8. Particularly if payment is made on or after October 1, 2002, consultation of the fee schedule for FY 2003 which will be available at www.uspto.gov is encouraged.

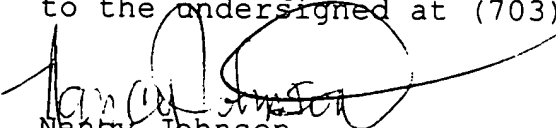
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions
Attn: Nancy Johnson

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang

Serial No.: 09/752,744

Group Art Unit:

Filed: 12/29/2000

Examiner:

For: **System and Method for Multicast Stream Failover**

PETITION TO REVIVE

Commissioner for Patents
Box DAC
Washington, D.C. 20231

Sir:

Applicant hereby petitions for revival of the above-indicated application which was inadvertently abandoned as a result of being unable to get signed documents from the inventor's on this application.

The four inventors in the above referenced patent application, only two executed assignments were returned. Despite attempts to contact the inventors for executed documents, nothing was received.

Two of the inventors joined a competing company to that of the assignee Road Runner, Inc., making the attaining of documents virtually impossible although the firm tried on several occasions.

Pursuant to employee agreements that all four inventors had obligations to send executed documents related to this application and to assign them rights to assignee Road Runner, Inc. In fact two of the inventors did execute assignments but did not execute declarations.

The last known addresses for the inventors are:

Joo Chung
5104 Woodfield Drive
Centreville, VA 20120

Michael Sun
2 Case Street, Apt 212
Syracuse, NY 13244

June 10, 2002

Atty. Docket No. 2585-001

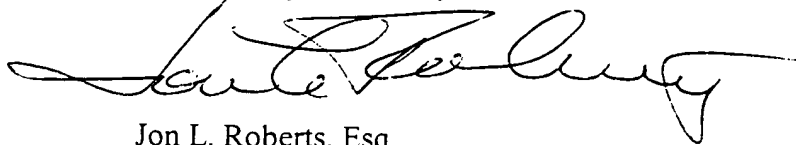
Kenneth Gould
11273 B Waples Mill Road
Oakton, VA 22124

Frank Huang
1218 Wild Hawthorn Way
Reston, VA 20194

In view of the above statement of facts Applicant/Assignee Road Runner, Inc. hereby submits (1) a Declaration of the undersigned attorney setting forth the facts and circumstances surrounding the inadvertent abandonment of this application, (2) Declaration of Mr. Kenneth Gould, and (3) copies of the recorded assignments of inventors Michael Sun and Kenneth Gould (4) the fee specified in 37 C.F.R. § 2.6.

In view of the above it is respectfully submitted that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR §1.137 (b) was unintentional.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jon L. Roberts", written in a cursive style.

Jon L. Roberts, Esq.
Registration No. 31,293
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive, Suite 1000
Reston, VA 20191-5302
(703) 391-2900



ROBERTS ABOKHAIR & MARDULA LLC

OPERATING ACCOUNT

PH. 703-391-2900

11800 SUNRISE VALLEY DRIVE, STE. 1000
RESTON, VA 20191

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PAY TO THE ORDER OF

DATE

AMOUNT

Commissioner for Patents and Trademarks

Jun 7/2002

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PHONE (703) 391-2700

ROBERTS ABOKHAIR & MARDULA, LL
 11800 SUNRISE VALLEY DRIVE
 SUITE 1000
 RESTON VA 20191-5302

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Road Runner 2585-001

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 Washington, D.C. 20231

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang

Serial No.: 09/752,744

Group Art Unit:

Filed: 12/29/2000

Examiner:

For: System and Method for Multicast Stream Failover

Enclosed please find the following:

1. Petition to Revive;
2. Declaration of Jon L. Roberts, Esq.;
3. One check in the amount of \$1,280.00.

